



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

September 19, 1947

**Hon. George P. Hudson
County Attorney
Jones County
Anson, Texas**

Opinion No. V-385

**Re: Validity of an
election held in
Jones County in
1909 to forbid
certain stock run-
ning at large**

Dear Sir:

**In your request for an opinion upon the above
stated subject matter you advise as follows:**

**"I have a case on the docket here
where a person is to be prosecuted for
wilfully permitting his stock (horses)
to run at large on the land of another.
The prosecution is under Article 1370,
P. C., Vernon's Statutes, and especially
as to:**

**"1. Whether or not the 'Stock Law'
is valid and in force in Jones County.**

**"2. If not valid, then is another
election the method for correction?"**

**Your request is accompanied by a transcript
of the proceedings in the minutes of the Commissioners'
Court of Jones County. From this transcript it appears
that everything is in proper order and that the elec-
tion therefore put the law into effect unless there be
a vice as to notice of the election and proclamation of
the result. You say:**

**"The question in my opinion is
whether publication was ever had on the
calling of the election or publication of
the results was ever had. There is nothing
in the Commissioners' Court's minutes in
regard to this, other than the above. In
my opinion the prosecution under the above**

in Jones County would not stand up because of inability to prove publication, and it will be necessary to hold an election on this before prosecution can be had on any such cases in the future."

The statute under which Jones County held the election involved was Senate Bill No. 157, Chapter LVII, of the 30th Legislature (1907), being Section 20b of that Act.

Section 12 of the Act is as follows:

"The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or by two respectable freeholders of the county and an order showing the result shall be duly recorded in the minutes of the commissioners' court in the said county. And the order showing the result of said election thus determined, certified and recorded, shall be held to be prima facie evidence that all the provisions of law have been complied with in presenting the petition, the action of the court thereon ordering the election, the giving of notice and holding said election and in counting and returning the votes, and declaring the result thereof, and if said election be then declared to be in favor of the stock law, then after thirty days from said date, it shall be prima facie evidence that the proclamation required by law has been made and published as required by law."

Of course, the indictment must specifically allege, and the evidence must show, all the essential facts to make the election valid, and the evidence must support such allegations before there can be a conviction. Having alleged such essential facts, Section 12 makes the prescribed orders of the Commissioners' Court prima facie evidence of such requisite steps. It appears from the transcript (abbreviated in some respects, however) that upon the introduction of such orders and proceedings of the Commissioners' Court, accompanied by factual elements as to the defendants, you will have made a prima facie case. Section 12 is now Article 6961 of Vernon's Civil Statutes.

We, therefore, answer your first question to the effect that it appears from the transcript of the proceedings of the Commissioners' Court of Jones County that the election referred to was in compliance with the law, and that the Stock Law was put into effect thereby. Having answered in this respect, it is not necessary for us to answer your second inquiry.

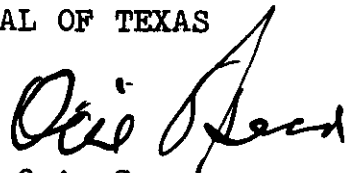
SUMMARY

From the transcript of the proceedings of the Commissioners' Court of Jones County, it appears that the election held in that county in 1909 to determine whether or not certain livestock should be permitted to run at large was regularly held and such law became effective in the county.

Yours very truly

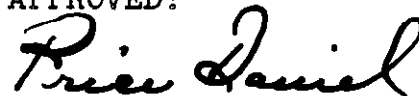
ATTORNEY GENERAL OF TEXAS

By


Ocile Speer
Assistant

OS-djm-mw-jcp

APPROVED:


ATTORNEY GENERAL